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tion of the parties. See *Manufacturing Co. v. Prather*, 65 Ark. 27, 44 S. W. 218. The principal case falls within this classification.

Where the contract is under seal, the courts are divided in their opinion as to the right of action. In some jurisdictions it is upheld. *Huckabee v. May*, 14 Ala. 263; *Fitzgerald v. Barker*, 70 Mo. 685; *McDowell v. Laev*, 35 Wis. 171. There seems to be no good reason for denying the right of action in such cases, other than the technical rule that a person not a party to a deed cannot sue thereon. *Haskett v. Flint*, 5 Blackf. (Ind.) 69, 33 Am. Dec. 452; *Flynn v. North Am. Life Ins. Co.*, 115 Mass. 449; *Willard v. Wood*, 135 U. S. 309.

CONTRIBUTORY NEGLIGENCE—PUBLIC CROSSINGS—DUTY OF TRAVELLER.—The plaintiff's servant upon approaching a public crossing with a team looked and listened, but did not stop. His view was obstructed by a line of freight cars, and he neither saw nor heard any train. The defendant's train came from behind the cars without giving any previous warning and killed the plaintiff's horse. Held, the plaintiffs not guilty of contributory negligence *per se*. *City of Elkins v. Western Maryland Ry. Co.* (W. Va.), 86 S. E. 762.

The railroad and travellers at public crossings have reciprocal rights and obligations, both being bound to the exercise of ordinary care. *Continental Improvement Co. v. Stead*, 95 U. S. 161; *Louisville & N. R. Co. v. Cummin's Adm'r*, 111 Ky. 333, 63 S. W. 594. Since what constitutes ordinary care varies according to the surrounding circumstances, and the more dangerous the crossing the greater the caution required of both parties, no exact standard can be fixed. *Continental Improvement Co. v. Stead*, *supra*; *Lake Shore & M. S. Ry. Co. v. McIntosh*, 140 Ind. 261, 38 N. E. 476; *Funston v. Chicago, R. I. & P. Ry. Co.*, 61 Iowa 452, 16 N. W. 518. All the courts, however, lay down the rule that ordinary care requires a person to look and listen for an approaching train before attempting to cross the track, and failure to do so constitutes contributory negligence barring a recovery. *Schofield v. Chicago, M. & St. P. Ry. Co.*, 114 U. S. 615; *Brickell v. New York Cent. & H. R. R. Co.*, 120 N. Y. 290, 24 N. E. 449, 17 Am. St. Rep. 648. But if compliance with the rule would be of no avail due to the track being obstructed, the rule does not apply. *Smedis v. Brooklyn & R. B. R. Co.*, 88 N. Y. 13.

In Pennsylvania it seems that in order to exercise ordinary care a person driving a team is bound to stop as well as look and listen before crossing the track, and a failure to do so is negligence *per se*. *Pennsylvania R. Co. v. Beale*, 73 Pa. St. 504, 13 Am. Rep. 753. See *Pennsylvania R. Co. v. Weber*, 76 Pa. St. 157, 18 Am. Rep. 407. And it has been suggested that where there are obstructions along the road so that a traveller cannot get a clear view of the track until he is very near it, ordinary care demands that he not only stop but also get out of his vehicle and lead his team across. See *Pennsylvania R. Co. v. Beale*, *supra*. And a recent Virginia case holds that where he cannot get a clear view of the track without getting out of his vehicle and going to a point where he can see around the obstructions, a failure to do so is contributory negligence. *United States Lumber Co. v. Shu-*

mate (Va.), 87 S. E. 723. But the view in practically all the states is that it is only necessary for a person approaching a public crossing to keep in mind the dangers attendant upon crossing and vigilantly use his senses of sight and hearing in an endeavor to avoid injury. *Continental Improvement Co. v. Stead*, *supra*. See *Davis v. New York Cent. & H. R. R. Co.*, 47 N. Y. 400. And if a traveller looks and listens and does all that a prudent man would do under the circumstances, he is not guilty of contributory negligence *per se* because he does not stop. *Tyler v. New York & N. E. R. Co.*, 137 Mass. 238; *Reed v. Chicago, St. P., M. & O. Ry. Co.*, 74 Iowa 188, 37 N. W. 149. Hence a failure to stop is not contributory negligence *per se* under all circumstances. *Reed v. Chicago, St. P., M. & O. Ry. Co.*, *supra*; *Kelly v. St. Paul M. & M. Ry. Co.*, 29 Minn. 1, 11 N. W. 67; *Judson v. Central Vermont R. Co.*, 150 N. Y. 597, 53 N. E. 514. See *Gratoit v. Missouri Pac. Ry. Co. (Mo.)*, 19 S. W. 31.

If it appear beyond dispute that the failure on the part of the traveller to stop, look, and listen was the proximate cause of the injury, such a failure is contributory negligence as a matter of law. *Schofield v. Chicago, M. & St. P. R. Co.*, *Supra*; *Tolman v. Syracuse, B. & N. Y. R. Co.*, 98 N. Y. 198, 50 Am. Rep. 649. But if the facts are disputed, or it is doubtful whether under the circumstances the failure to stop, look, and listen was the proximate cause of the injury, the question of failure to use ordinary care is for the jury. *Kellog v. New York Cent. & H. R. R. Co.*, 79 N. Y. 72; *Judson v. Central Vermont R. Co.*, *supra*.

CORPORATIONS—VOTING TRUSTS—REVOCATION.—Under a certain voting trust agreement it was expressly stipulated that the subscribers thereto should not withdraw before a definite time. The plaintiff, one of a combination of stockholders controlling a majority of the stock, transferred his stock to the defendant, the trustee under the agreement. Before the time for the dissolution of the trust the plaintiff sought to withdraw therefrom. *Held*, in spite of his express agreement to the contrary, the plaintiff has an absolute right to the control of his stock and the voting power thereof. *Luthy v. Ream (Ill.)*, 110 N. E. 373.

Separation of voting power of corporate stock from the beneficial ownership thereof, was so discountenanced at common law that a shareholder was not even permitted to vote by proxy. *Taylor v. Griswold*, 14 N. J. L. 222, 27 Am. Dec. 33; 1 Bl. Com. 168. See *Philips v. Wickham*, 1 Paige (N. Y.) 590, 598. Now, statutes universally permit stock voting by proxy but by express provision of the same or the judicial construction thereof, no interest can be acquired by the holder of a proxy nor can a proxy be given for a definite term, irrevocable against the owner of the stock. *In re Germicide Co.*, 65 Hun 606, 20 N. Y. Supp. 495; *Schmidt v. Mitchell*, 101 Ky. 570, 41 S. W. 929. In fact the proxy presents no true instance of alienation of the voting power from the beneficial ownership of the stock; it is merely an agency not coupled with an interest and as such revocable at any time and at all times amenable to the will of the owner.

Complications difficult of solution arise where the holder of the alienated voting power is clothed with apparent ownership—the legal ti-